

Notice of Emergency Rule

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**Division of Pari-Mutuel Wagering**

RULE NO.: RULE TITLE:

61DER21-3: TESTING METHODOLOGIES; MEASUREMENT UNCERTAINTIES; SCREENING LIMITS

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE:

The Division of Pari-Mutuel Wagering (“Division”) is statutorily mandated to test for and prosecute the use of prohibited levels of permitted substances and of prohibited medications and substances which can cause injury or death to racing horses as well as compromise the integrity of the races conducted. On February 25, 2021, the Division received a 30-day notice letter alleging that an unadopted rule challenge would be filed for the Division’s alleged failure to promulgate testing methodologies and measurement uncertainties for the testing of biological specimens collected from racing horses. Although the Division rejects the allegation that it has failed to comply with statute by promulgating testing methodologies and measurement uncertainties, the Division believes that the immediate promulgation of an emergency rule that provides clarification as to the University of Florida Racing Laboratory’s testing methodologies and measurement uncertainties is necessary to ensure the continued safety of racing horses and the integrity of the racing industry.

Emergency Rule 61DER21-2 was adopted and took effect on March 4, 2021. On March 29, 2021, the Division published the Notice of Proposed Rule 61D-6.007 in an effort to provide clarification as to the University of Florida’s Racing Laboratory’s testing methodologies and measurement uncertainties. On April 13, 2021, a rule challenge to Proposed Rule 61D-6.007 was filed.

On May 10, 2021, a challenge to Emergency Rule 61DER21-2 was filed. In direct response to this challenge, the Division is filing this new emergency rule text to address specific concerns and provide further clarification sought by members of the industry. Emergency Rule 61DER21-3 supersedes and replaces Emergency Rule 61DER21-2.

An immediate danger exists which requires emergency action by the Division in order to protect the health, safety, and welfare of the numerous racing animals scheduled to perform in the immediate future. At this time, there are multiple performances scheduled through the end of June. Additionally, without this emergency rule there would

be an immediate danger to the wagering public and the integrity of pari-mutuel horse racing which the Division is mandated by Chapter 550, F.S., to regulate.

Based on the fact that there are performances scheduled, the Division fears an immediate danger to the health, safety, and welfare of racing animals, the wagering public and the integrity of racing as a whole will exist without this emergency rule.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES:

The procedure used to adopt this emergency rule is fair under the circumstances. The Division has determined that this emergency rule will not have an adverse impact on small business and is not likely to directly or indirectly increase regulatory costs. Furthermore, the procedure used to adopt this emergency rule provides at least the procedural protection given by other statutes, the State Constitution, or the United States Constitution.

In addition, this emergency rule addresses the specific concerns identified by members of the horseracing industry. As such, the Division is only taking action necessary to protect the public under the procedure used to adopt this emergency rule.

SUMMARY: Emergency Rule 61DER21-3, F.A.C., prescribes the testing methodologies and measurement uncertainties applicable to the testing of biological specimens sent to the University of Florida Racing Laboratory for analysis as well as clarifying when these testing methodologies and measurement uncertainties apply. These changes address specific concerns identified by the pari-mutuel industry and are a valid exercise of delegated legislative authority.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Bryan Barber, Division of Pari-Mutuel Wagering, bryan.barber@myfloridalicense.com, 2601 Blair Stone Rd., Tallahassee, FL 32399, (850)717-1761.

THE FULL TEXT OF THE EMERGENCY RULE IS:

61DER21-3: Testing Methodologies; Measurement Uncertainties; Screening Limits

In addition to the rules that exist under Rule 61D-6.008, Florida Administrative Code, the following procedures are promulgated under an emergency basis:

(1) Testing Methodologies: Methodologies used to screen for and confirm the administration of medications, drugs, and naturally occurring substances in racing horses shall be limited to the following: Immunoassay, Liquid

Chromatography Mass Spectrometry (LCMS), Gas Chromatography Mass Spectrometry (GCMS), Clinical Refractometer, and/or Specific Gravity.

(2) Measurement Uncertainties: The Division hereby incorporates by reference the Division Laboratory Measurement Uncertainty Schedule containing the established levels, effective May 20, 2021. A copy of the Division Laboratory Measurement Uncertainty Schedule is available by contacting Bryan Barber, Division of Pari-Mutuel Wagering, bryan.barber@myfloridalicense.com, 2601 Blair Stone Rd., Tallahassee, FL 32399, (850)717-1761.

(a) All measurement uncertainties have been established at the maximum allowable concentration for those substances, analytes, and corresponding metabolites or markers contained within Rule 61D-6.008 F.A.C., that undergo quantitative analysis, unless otherwise specified.

(b) If a sample is diluted for testing, the measurement uncertainty is multiplied by the factor of dilution.

(c) Measurements of uncertainty are not established for the testing of specimens in which the identification of a substance, analyte, or corresponding metabolite or marker at or above the lowest level of detection is sufficient to constitute a violation.

(3) Screening Limit for Prohibited Substances in Racing Horses: Any and all findings above zero that are over the limit of detection, under any condition of use, for prohibited substances shall be considered a violation of section 550.2415, F.S.

*Rulemaking Authority 550.0251(3), (11) 550.2415 (12) FS. Law Implemented 550.0251, 550.2415 FS. History- New 05-20-21;*

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: 05- 20- 2021